

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 184

July 7, 1998, 9:35 a.m.  
Page S-7526 Temp. Record

## PRODUCT LIABILITY REFORM/Cloture, motion to proceed

**SUBJECT:** Product Liability Reform Act . . . S. 648. Lott motion to close debate on the motion to proceed.

### ACTION: CLOTURE MOTION AGREED TO, 71-24

**SYNOPSIS:** As reported, S. 648, the Product Liability Reform Act, will enact the provisions, with minor modifications, of the bipartisan product liability reform bill that was vetoed by the President last Congress (see 104th Congress, second session, vote No. 46). The intention of the bill's supporters was to offer as an amendment a significantly scaled-back version of the bill. That version was negotiated between the Clinton Administration and Republican and Democratic Senators, and was approved by all sides. However, the managers were unable to offer that amendment because some Senators indicated that they intended to engage in extended debate on the motion to proceed to the bill. Cloture on that motion was therefore filed.

On June 26, 1998, Senator Lott, for himself and others, moved to close debate on the motion to proceed.

NOTE: A motion to invoke cloture requires a three-fifths majority (60) vote of the Senate to succeed.

**Those favoring** the motion to invoke cloture contended:

We have been trying to enact product liability reform legislation for more than 10 years. In the early years, we could not get such a bill through Congress due to constant filibusters. Unfortunately, now that we have enough Senators to break a filibuster, we also have a President who is opposed to enacting a comprehensive reform bill. We tried passing such a bill last Congress, and, though a strong, bipartisan majority in Congress supported it, that majority was not great enough to overcome the President's veto.

After that veto, Republican and Democratic supporters of reform began negotiations with the White House on the adoption of a much more limited measure. That tack was taken because it was the only possible way to get any bill enacted, however minor, in the next few years. Enough Members are so viscerally opposed to making even the slightest improvements to the current system that any veto would be upheld. Thus, our only options were to negotiate with the President on the terms of a very modest reform

(See other side)

YEAS (71)			NAYS (24)		NOT VOTING (5)	
Republicans (50 or 94%)	Democrats (21 or 50%)		Republicans (3 or 6%)	Democrats (21 or 50%)	Republicans (2)	Democrats (3)
Abraham	Hatch	Bingaman	D'Amato	Akaka	Hutchison- <sup>2</sup>	Inouye- <sup>2</sup>
Allard	Helms	Bryan	Roth	Baucus	Specter- <sup>3</sup>	Mikulski- <sup>2</sup>
Ashcroft	Hutchinson	Bumpers	Shelby	Biden		Sarbanes- <sup>2</sup>
Bennett	Inhofe	Byrd		Boxer		
Bond	Jeffords	Daschle		Breaux		
Brownback	Kempthorne	Dodd		Cleland		
Burns	Kyl	Dorgan		Conrad		
Campbell	Lott	Glenn		Durbin		
Chafee	Lugar	Johnson		Feingold		
Coats	Mack	Kerrey		Feinstein		
Cochran	McCain	Kohl		Ford		
Collins	McConnell	Landrieu		Graham		
Coverdell	Murkowski	Lautenberg		Harkin		
Craig	Nickles	Leahy		Hollings		
DeWine	Roberts	Lieberman		Kennedy		
Domenici	Santorum	Moynihan		Kerry		
Enzi	Sessions	Reed		Levin		
Faircloth	Smith, Bob	Reid		Moseley-Braun		
Frist	Smith, Gordon	Robb		Murray		
Gorton	Snowe	Rockefeller		Torricelli		
Gramm	Stevens	Wyden		Wellstone		
Grams	Thomas					
Grassley	Thompson					
Gregg	Thurmond					
Hagel	Warner					

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

bill that he would sign, or to wait until the election of a new President, and a new Congress, which might be more favorable to fixing the many manifest problems with the product liability tort system.

The negotiations with the President were successful. A legislative proposal has been drafted that the President has promised that he will sign if it comes to him unamended. That proposal: will cap punitive damages for individuals and small businesses; will place an 18-year limit (statute of repose) on the filing of lawsuits relating to harm caused by goods used in the workplace; will generally limit liability for product sellers, renters, and lessors to injuries caused by their own negligence or failure to comply with warranties (though they will still be liable if a guilty manufacturer is unable to pay); will allow either party to volunteer to use a State alternative dispute resolution (ADR) procedure instead of going to court, and defendants who unreasonably refuse and then lose in court will have to pay the plaintiffs' legal fees and court costs; will create a uniform legal and evidentiary standard for punitive damages; will limit biomaterial manufacturers' liability; will give a plaintiff the right to sue within 2 years of discovering both an injury and its cause; will reduce liability to the extent that the harm caused came from the misuse or alteration of a product; and will give a claimant a defense from liability if the injury was primarily caused because the defendant was under the influence of drugs or alcohol. This proposal is by no means as far reaching as a clear majority of Senators would like it to be, but it is definitely a step in the right direction. Most importantly, if the Senate passes it, the President will sign it.

In all of our years in the Senate, the only product liability legislation we have been able to see through to enactment has been for the small aircraft industry. Before passage of that legislation, more than 90 percent of that industry had been destroyed by unjust product liability suits. For instance, in one suit, a small plane manufacturer had been found guilty of selling a defective product when a drunken pilot, who was performing stunts to show off for his friends, suffered injuries. He alleged that the antique plane he was flying should have been retrofitted with a seatbelt because the company's new planes all had seatbelts. Now that the ability to file and win those types of lawsuits has been restricted, the small aircraft industry has rebounded in the United States.

After the years of debate on product liability suits, Senators are very familiar with the arguments. Opponents of the legislation will say it is not needed because the economy is doing well. We will respond that we are not opposed to it doing better. Opponents will say it is a States' rights issue. We will respond that it is an issue of interstate commerce, because nearly all manufactured goods are sold outside of the States in which they were made. Also, we will note that the National Governors' Association, which zealously protects States' rights, supports this bill because it does not like the current system in which a few States have product liability systems that feed on businesses in all the other States (last year, more than 85 percent of all product liability judgments came from three States--Alabama, California, and Texas). Opponents will say we are just lawyer-bashing, and the current system results in safe products. We will respond that the lawyers deserve bashing for defending a system that often leaves grievously injured people undercompensated, more frequently leaves people with minor injuries undercompensated, and frequently results in huge awards to people who have only minor injuries. The current system is a lottery system and must be reformed. As for the claim that it makes products safer, we note that the current system discourages efforts to make products safer, because doing so then opens up the manufacturer to charges that their old products were unsafe. Also, just the cost of going to court discourages production and innovation. For instance, we know that most medical supply manufacturers now spend more money defending themselves from product liability suits than they make from selling their products, even though they win those suits.

The debate on this bill does not need to be extended. We are confident that we have the votes to invoke cloture, and we are confident that the President will sign it. The incremental improvements that are in this bill will become law, and order will finally start to come to this country's chaotic product liability tort system.

**Those opposing** the motion to invoke cloture contended:

We oppose cloture because we oppose this bill, as we have opposed all of the broader assaults that have been made against the States' product liability systems over the years. For 200 years we have allowed States to decide these matters, and they have done a good job. In some cases, huge punitive damages have been awarded, such as in the Ford Pinto case, and the result of those huge judgments has been to make manufacturers very conscience of safety. We are pleased that manufacturers know that if they cut corners they may be severely punished. We know that this bill is popular because it attacks lawyers, but we are not going to join the anti-lawyer bandwagon. They have done an admirable job in the 50 States enforcing the tort laws as established by those State legislatures. The system is working well without interference from the Federal Government. The American Bar Association, the premier legal organization in this country, opposes the compromise bill that has been negotiated with the President. We urge our colleagues to respect the expertise of that organization by joining us in opposing cloture.